

BILL ANALYSIS

Senate Research Center

S.B. 846
By: Carona
State Affairs
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Enrolled

DIGEST

Currently, Texas law requires a person who is taking the barber examination to pay a \$10 fee for such an examination. It is estimated that these examinations cost the agency \$35 to administer. The Texas Barber Law also does not provide the State Board of Barber Examiners (board) the ability to assess administrative fines and civil penalties for violations of the law. S.B. 846 authorizes the board to set the examination fee that is charged to an applicant and provides that any violator of the Texas Barber law to be assessed an administrative penalty.

PURPOSE

As enrolled, S.B. 846 regulates certain fees and penalties applicable to the regulation of barbers.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23(b), Chapter 65, (Article 8407a, V.T.C.S.), to require the fees to be paid to the Board by an applicant for an examination to determine the applicant's, rather than his, fitness to receive a certificate of registration to practice barbering or to practice as a barber technician to be set by the board in an amount not to exceed \$50, rather than \$10.

SECTION 2. Amends Section 24, Chapter 65, (Article 8407a, V.T.C.S.), as follows:

Sec. 24. VIOLATIONS. Authorizes certain actions to be a violation of this Act for which an administrative penalty may be imposed under Section 24A of this Act. Deletes text regarding punishment by a fine. Makes conforming changes.

SECTION 3. Amends Chapter 65, (Article 8407a, V.T.C.S) by adding Section 24A-24M, as follows:

Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person for a violation under Section 24 of this Act.

Sec. 24B. AMOUNTS OF ADMINISTRATION PENALTY. Prohibits the amount of the administrative penalty from exceeding \$1,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Requires the amount of penalty to be based on certain criteria.

Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. Authorizes the executive director to issue to the board a report stating certain facts and recommendations if the executive director determines that a violation occurred. Requires the executive director to give written notice of the report to the person not later than a certain date. Requires the notice to include certain information.

Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person to in writing take certain action, not later than not later than the 20th day after the date the person receives the notice. Requires the board by order to approve the determination and impose the recommended penalty, if the person accepts the determination and recommended penalty of the executive director.

Sec. 24E. HEARING. Requires the executive director to set a hearing and give written notice of the hearing to the person, if the person requests a hearing or fails to respond in a timely manner to the notice. Requires an administrative law judge of the State Office of Administrative Hearing to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 24F. DECISION BY BOARD. Authorizes the board based on the findings of fact, conclusions of law, and proposal for a decision to by order to conclude certain finds. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person not later than a certain date to take certain action.

Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 24G of this Act to take certain action. Authorizes the executive director to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit, if the executive director receives a copy of an affidavit under Subsection (a)(2) of this section. Requires the court to hold a hearing on the fact alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 24J. DECISION BY COURT. Authorizes to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty, if the court sustains the finding that a violation occurred. Requires the court to order that a penalty is not owed, if the court does not sustain the finding that a violation occurred.

Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. Requires the court to order, when the court's judgement becomes final, that the appropriate amount plus accrued interest be remitted to the person, if the person paid the administrative penalty is not upheld by the court. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 24L. RELEASE OF BOND. Requires a court to order, when the court's judgment becomes final, the release of the bond, if the person gave a supersedeas bond and the administrative penalty is not upheld by the court. Requires the court to order the release of the bond after the person pays the reduced amount, if the person gave a supersedeas bond and the amount of the penalty is reduced.

Sec. 24M. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 4. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 5. Emergency clause.